

UNITED STATES
v.
HOWARD D. LONG
DOLORES M. KILLION

IBLA 78-347

Decided September 28, 1979

Appeal from decision of Administrative Law Judge Harvey C. Sweitzer declaring lode mining claims null and void for lack of the discovery of a valuable mineral deposit.

Affirmed.

1. Mining Claims: Hearings -- Rules of Practice: Hearings

A second hearing will not be afforded where a mining claimant had notice of and appeared at the first hearing and no evidence has been submitted suggesting another hearing would produce a different result.

2. Appeals -- Attorneys -- Mining Claims: Hearings

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

APPEARANCES: Steve Rider, Esq., Aurora, Colorado, for the appellants; Charles B. Lennahan, Esq., Office of the General Counsel, Department of Agriculture, for the Government.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Howard D. Long and Dolores M. Killion have appealed from a decision of Administrative Law Judge Harvey C. Sweitzer, dated March 7, 1978, declaring their Last Chance, Roseburg, and Surprise lode mining claims null and void for lack of a discovery of a valuable mineral deposit. The claims are situated in sec. 13, T. 2 S., R. 73 W., sixth principal meridian, Gilpin County, Colorado, within the Roosevelt National Forest.

The Bureau of Land Management (BLM), on behalf of the Forest Service, Department of Agriculture, initiated contest proceedings challenging the validity of appellants' mining claims in part because "[n]o valuable mineral deposit has been discovered within the limits of the claims." Appellants submitted a timely answer, and appeared, testified and presented documentary evidence at the hearing.

In their statement of reasons for appeal, appellants contend that they are entitled to another hearing because: 1) they were not represented by counsel; 2) they were "not fully apprised of the nature of the [h]earing" and believed it "concerned certain improvements on the subject property"; 3) they did not submit all the evidence in their favor; and 4) certain Government documents were "questionable as to authenticity."

[1] The decision of the Administrative Law Judge sets out a summary of the pertinent evidence and the applicable law as well as his findings and conclusions. We are in agreement with the decision and incorporate it herein as Appendix A.

It is well settled that due process requires notice and an opportunity to be heard but does not require an opportunity for a second hearing in the absence of a compelling reason to the contrary. United States v. Weigel, 26 IBLA 183 (1976); United States v. MacIver, 20 IBLA 352 (1975). Generally, new hearings are granted only when there is some indication that a different result would obtain. United States v. Freese, 37 IBLA 7 (1978).

Where a mining claimant had notice of and appeared at the first hearing and no evidence has been offered suggesting another hearing would produce a different result, a second hearing will not be afforded. United States v. Freese, *supra*. Appellants were both present at the first hearing and both had an opportunity to speak and present evidence. They have offered no evidence to suggest that a different result would obtain should they be granted a second hearing.

Furthermore, there is no evidence that appellants were not fully apprised of the nature of the hearing. In fact, their answer to the Government's contest complaint and their conduct during the course of the hearing belie their assertion of bewilderment.

[2] As to appellants' contention that they should have been represented by counsel, we need only point out that their failure to obtain counsel affords them no greater rights on appeal than if they had had counsel. Eldon Brinkerhoff, 24 IBLA 324, 83 I.D. 185 (1976); United States v. Jenkins, 11 IBLA 18 (1973). It was their responsibility to obtain counsel, if desired. The Department is not obligated by the Constitution or statute to furnish counsel for a party to an administrative hearing. United States v. Gayanich, 36 IBLA 111

(1978); United States v. Jenkins, *supra*; Hullom v. Burrows, 266 F.2d 547 (6th Cir. 1959), cert. denied, 361 U.S. 919 (1959). Furthermore, we note that appellants were fully counseled by the judge as to their rights to cross-examine, to present evidence, and to otherwise participate in the hearing (Tr. 7, 8, 13-14, 27).

Their assertion that certain Government documents were of "questionable" authenticity is without substance. Appellants have not pointed to any specific documents; it is not possible to determine to which documents they might be referring. The Government submitted only four exhibits -- a qualifying statement for the Government's mineral examiner and copies of appellants' three notices of location.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

